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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 SHERRI M.,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

CASE NO. C18-5136 BAT

**ORDER AFFIRMING THE
COMMISSIONER'S DECISION AND
DISMISSING THE CASE WITH
PREJUDICE**

13 Plaintiff appeals the denial of her applications for Disability Insurance Benefits. She
14 contends the ALJ harmfully erred by misevaluating (1) the medical evidence; (2) plaintiff's
15 testimony; and (3) lay testimony by a former work supervisor and by plaintiff's mother. Dkt. 13.
16 The Court **AFFIRMS** the Commissioner's final decision and **DISMISSES** the case with
17 prejudice.

18 **BACKGROUND**

19 Plaintiff is currently 50 years old and has worked as an administrative clerk, a medical
20 receptionist, a unit clerk, a medical records clerk, and a medical records technician. Tr. 35, 242.
21 She alleges disability that began on **February 28, 2014**. Tr. 191. Utilizing the five-step disability
22 evaluation process, the ALJ found, among other determinations, that plaintiff's severe
23 impairments included morbid obesity, chronic cervical strain with degenerative disc disease at

1 C4–5, lumbar degenerative disc disease at L5-S1 with left sciatic pain, diabetes mellitus type II,
2 bipolar disorder, PTSD, insomnia, and migraine headaches; that plaintiff has the residual
3 functional capacity (“RFC”) to perform a range of light work with various physical, social, and
4 mental restrictions; and, although plaintiff could not return to her past relevant work, that her
5 RFC permitted her to perform jobs that exist in significant numbers in the national economy. Tr.
6 18–37. The ALJ therefore concluded that plaintiff was not disabled from the alleged onset date
7 of February 28, 2014, through the date of the decision. Tr. 37.

8 **DISCUSSION**

9 The Court will reverse the ALJ’s decision only if it was not supported by substantial
10 evidence in the record as a whole or if the ALJ applied the wrong legal standard. *Molina v.*
11 *Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012). The ALJ’s decision may not be reversed on account
12 of an error that is harmless. *Id.* at 1111. Where the evidence is susceptible to more than one
13 rational interpretation, the Court must uphold the Commissioner’s interpretation. *Thomas v.*
14 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

15 Plaintiff contends that the ALJ harmfully erred by misevaluating the medical record,
16 plaintiff’s testimony, and lay testimony by a former work supervisor and by plaintiff’s mother.
17 She offers, however, little to challenge the reasonableness of the ALJ’s interpretation aside from
18 arguing that the record should have been examined in the light most favorable to plaintiff. The
19 Court finds that the ALJ’s decision was supported by substantial evidence and was free of
20 harmful legal error.

21 **1. Medical Evidence**

22 Plaintiff takes a shotgun approach in challenging the ALJ’s interpretation of the medical
23 evidence, asserting that the medical evidence that suggested disability should have been credited

1 and the evidence that contradicted disability should have been discounted. The Court finds that
2 plaintiff's conclusory argumentation does not undermine the reasonableness of the ALJ's
3 interpretation of the medical evidence.

4 Where, as here, there is conflicting medical evidence, the ALJ must determine credibility
5 and resolve the conflict. *Thomas*, 278 F.3d at 956–57. The ALJ gave great weight to the opinions
6 of examining psychiatrist Jennifer Shannon, M.D., examining physician Donna Moore, M.D.,
7 non-examining psychologist Jan Lewis, Ph.D., non-examining psychologist Vincent Gollogly,
8 Ph.D., and non-examining physician Alnoor Virji, M.D., citing treatment and examination notes
9 that supported these opinions and discounting the acceptable medical and “other source”
10 opinions that conflicted with those of Drs. Shannon, Moore, Lewis, Gollogly, and Virji. Tr. 24–
11 35. The Court therefore examines whether the ALJ cited specific and legitimate reasons for
12 discounting doctors' opinions that contradicted those of Drs. Shannon, Moore, Lewis, Gollogly,
13 and Virji and cited germane reasons for discounting “other sources” such as plaintiff's counselor
14 and chiropractor. *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). To the extent the ALJ
15 gave a valid reason supported by substantial evidence to discount the acceptable medical and
16 other opinions, the Court need not discuss the other reasons the ALJ provided. Even assuming
17 the other reasons are erroneous, the errors would be harmless. *See Carmickle v. Comm'r, SSA*,
18 533 F.3d 1155, 1162 (9th Cir. 2008) (including an erroneous reason among other reasons to
19 discount a claimant's credibility does not negate the validity of the overall credibility
20 determination and is at most harmless error where an ALJ provides other reasons that are
21 supported by substantial evidence).

22 With respect to mental limitations, the ALJ gave great weight to examining psychiatrist
23 Dr. Shannon's July 2016 opinion because Dr. Shannon had performed an exhaustive historic

1 review and a thorough examination, and the opinion was consistent with her clinical findings.
2 Tr. 34–35. Dr. Shannon opined that plaintiff’s current psychiatric status, given its stability, was
3 not impacting her current daily functioning. Tr. 812. Dr. Shannon noted that plaintiff had a
4 longstanding history since the age of 10 years of depressive episodes in the context of her bipolar
5 disorder, that it was likely that she experienced an increase in depressive and anxiety symptoms
6 after her car accidents in 2011 and 2013 secondary to the pain and limitations the accidents
7 caused, and that her depression and anxiety had stabilized with medication and psychotherapy.
8 Tr. 810–11. The ALJ gave great weight to the October 2014 opinion of non-examining
9 psychologist Dr. Lewis and to the January 2015 affirming opinion of Dr. Gollogly because the
10 doctors’ opinions were consistent with the overall record; for example, they were consistent with
11 certain observations and clinical assessments about reasoning, insight, memory, attention, and
12 concentration made by examining psychologist Marsha Hedrick, Ph.D., treating nurse
13 practitioner Molly Henderson, A.R.N.P., and examining psychiatrist Dr. Shannon Tr. 34. Drs.
14 Lewis and Gollogly opined that plaintiff could complete a regular workday/workweek
15 performing routine tasks with occasional difficulty due to depressive symptoms and was able to
16 interact on an occasional basis with the general public and coworkers due to depressive
17 symptoms. Tr. 99–100, 114–15.

18 With respect to physical limitations, the ALJ gave great weight to examining physician
19 Dr. Moore because Dr. Moore conducted an exhaustive historic review and a thorough
20 examination, and her opinion was consistent with her clinical findings and the record as a whole.
21 Tr. 28. Dr. Moore opined: “I feel the examinee, with appropriate treatment, should not be fully
22 disabled. I think that she should be able to return to gainful employment but needs intensive
23 rehabilitation and will be able to perform light duty/sedentary work.” Tr. 831. Dr. Moore further

1 noted: “I think the plaintiff will be able to return to light duty/sedentary work with proper
2 treatment and sleep restoration.” Tr. 831. The ALJ also gave great weight to non-examining
3 physician Dr. Virji because Dr. Virji reviewed the medical evidence and his opinion was
4 consistent with the overall record; for example, Dr. Virji’s opinion was consistent with the
5 clinical observations regarding range of movement, pain, and strength made by treating
6 neurologist Gregory Bell, M.D., and treating neurosurgeon Yoshihiro Yamamoto, M.D. Tr. 35.
7 Dr. Virji opined that plaintiff could stand and walk 4 hours in an 8-hour workday and sit for 6
8 hours in an 8-hour workday with certain physical restrictions. Tr. 112.

9 The Court finds that to the extent the ALJ discounted examining medical opinions for
10 being based on a “one-time exam,” *see, e.g.*, Tr. 33 (referring to Dr. Hedrick), that rationale was
11 not a specific and legitimate reason. In general, examining doctors see claimants one time and
12 that fact, in and of itself, does not constitute a legitimate reason for rejecting an examining
13 doctor’s opinion. Nonetheless, the ALJ’s rejection of examining opinions for being, by
14 definition, examining opinions constituted harmless error because the ALJ stated at least one
15 specific and legitimate reason for discounting the medical and other opinions that contradicted
16 her RFC determination and the opinions of Drs. Shannon, Moore, Lewis, Gollogly, and Virji.

17 The ALJ credited examining psychologist Dr. Hedrick’s opinion that plaintiff could
18 perform tasks that require concentration and had average persistence in the face of difficulty but
19 discounted Dr. Hedrick’s opinion regarding social functioning. Tr. 33. The ALJ gave only some
20 weight to Dr. Hedrick’s opinion because it was based on a limited document review, the
21 assessment of social functioning was not consistent with claimant’s daily activities including
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1 shopping in stores, attending church,¹ and contacting clients on the phone, and was vague and
2 did not specifically describe plaintiff's level of functioning. Tr. 33, 501. The ALJ gave less
3 weight to the opinion of examining psychiatrist Erum Khaleeq, M.D., and more weight to the
4 contradictory opinion of examining psychiatrist Dr. Shannon because while Dr. Khaleeq's
5 review of the record was limited, Dr. Shannon's review of the record was exhaustive and
6 accompanied by a thorough examination. Tr. 35; *compare* Tr. 552 (Dr. Khaleeq noting that his
7 review of the records involved "[a] medical source statement of ability to do work-related
8 activities, mental" and "[t]here are some reports of mental evaluation completed by Dr. Marsha
9 Hedrick, PhD, back in September 2014") *with* Tr. 804–11 (Dr. Shannon setting forth and
10 analyzing by each dated entry records from November 2010 to June 2015, noting the incomplete
11 nature of the psychiatric findings, and noting that she would file an addendum once more
12 psychiatric records were received). The ALJ discounted the opinion of significant physical
13 limitations made by examining physician Joyce Luteyn, M.D., because it was conclusory and
14 provided without supporting objective evidence, appeared to rely solely on plaintiff's self-report
15 of symptoms and limitations, was inconsistent with the clinical findings of treatment providers
16 and examiners, was made without the benefit of a complete medical history, and referred to
17 plaintiff reporting 15 migraines per month without plaintiff mentioning that her Botox therapy
18 for migraines had just been restarted and had unquestionably alleviated the symptoms and
19 frequency of her migraines. Tr. 33, Tr. 504–11. The Court finds that the ALJ reasonably

22 ¹ Although plaintiff asserts that she ceased attending church, in her self-report of June 2014, i.e.,
23 three months after her alleged onset date, she stated that she attended church every other week.
Tr. 274. That contradicts plaintiff's statement to Dr. Hedrick that she ceased attending church
after her first car accident in 2011. Tr. 501.

1 interpreted the opinions of Drs. Hedrick, Khaleeq, and Luteyn, and that the above-stated reasons
2 for discounting those opinions were specific, legitimate, and supported by the record.

3 The ALJ discounted the opinion of plaintiff’s counselor Christine Lebeau, M.A.,
4 regarding mental limitations because the narrative opinion included “symptoms not recorded in
5 the counselor’s very limited treatment notes,” and the reliability of Ms. Lebeau’s conclusions
6 were undercut by Dr. Shannon’s assessment that the treatment notes contained inadequate
7 specificity. Tr. 34, 541. Dr. Shannon reviewed Ms. Lebeau’s treatment notes and remarked:
8 “These notes are limited with regards to psychiatrically relevant information regarding specific
9 depression, anxiety, posttraumatic stress disorder symptomatology or severity” Tr. 804. The
10 ALJ discounted the opinion of treating chiropractor Craig Cheple, D.C., regarding physical
11 limitations because it was conclusory and vague, providing little information about the evidence
12 relied upon and not specifically describing plaintiff’s level of functioning. Tr. 33, 450. The Court
13 finds that the ALJ reasonably interpreted the opinions of Ms. Lebeau and Mr. Cheple and that the
14 above-stated reasons for discounting those opinions were germane and supported by the record.
15 Thus, it was harmless error for the ALJ to have implied that the opinions of Ms. Lebeau and Mr.
16 Cheple were rejected because they were not acceptable medical sources.

17 Plaintiff argues that in assessing RFC the ALJ erroneously declined to account for Dr.
18 Shannon’s statement that, although her longstanding psychiatric condition is stable, plaintiff
19 “requires ongoing treatment, including psychiatric and psychotherapeutic interventions,” Tr. 813,
20 and Dr. Moore’s statement that plaintiff needed appropriate treatment and sleep therapy to return
21 to light/sedentary work, Tr. 831. The Court disagrees. Plaintiff has not demonstrated that she is
22 incapable of receiving adequate treatment. There is therefore no indication that the ALJ erred by
23 not including in the RFC a requirement that plaintiff receive ongoing treatment before or after

1 becoming employable. *See, e.g., Warre v. Comm’r of SSA*, 439 F.3d 1001, 1006 (9th Cir. 2006)
2 (“Impairments that can be controlled effectively with medication are not disabling for the
3 purpose of determining eligibility for SSI benefits.”). Neither Dr. Shannon nor Dr. Moore
4 equivocated about plaintiff’s ability to work if receiving proper treatment. Dr. Shannon stated, “I
5 do not believe that her current psychiatric status, given it is stable, is impacting her current daily
6 functioning.” Tr. 812. Dr. Moore stated, “I feel the examinee, with appropriate treatment, should
7 not be fully disabled.” Tr. 831.

8 To the extent plaintiff asserts generally that the medical evidence supporting disability
9 should be credited and any evidence supporting the ALJ’s RFC assessment should be
10 disregarded, the Court may not reverse because plaintiff’s interpretation differs from the ALJ’s
11 reasonable interpretation of the medical evidence. The ALJ supported her evaluation of the
12 medical record with substantial evidence and this evaluation was free from harmful legal error.

13 2. Plaintiff’s Testimony

14 Plaintiff contends that the ALJ improperly discounted her testimony. The Court
15 disagrees.

16 Once there is a medically determinable impairment that could reasonably be expected to
17 cause a claimant’s symptoms, specific, clear and convincing reasons are needed to reject a
18 claimant’s testimony if there is no affirmative evidence of malingering. *Lester v. Chater*, 81 F.3d
19 821, 834 (9th Cir. 1996). The ALJ discounted the severity of plaintiff’s symptom testimony
20 because it was inconsistent with (1) the medical evidence, (2) her work history and daily
21 activities, and (3) her other testimony in the record.

22 First, the ALJ noted the medical evidence that plaintiff could perform the mental and
23 physical demands of the assessed RFC. Tr. 28–32. With respect to physical limitations, the ALJ

1 discounted plaintiff's stated symptoms by noting that treating neurologist Dr. Bell repeatedly
2 referred to largely unremarkable examinations; treating nurse practitioner Ms. Henderson
3 consistently found normal gait and station; treating neurosurgeon Dr. Yamamoto found certain
4 symptoms but generally remarked on an unremarkable physical examination; and Dr. Moore,
5 while referring to certain symptoms, opined that she could return to light/sedentary work. Tr. 28–
6 29, 377–96, 413–33, 695–716, 796–98, 814–33. With respect to mental limitations, the ALJ
7 discounted plaintiff's stated symptoms by noting that the treatment and examination notes by
8 nurse practitioner Ms. Henderson, Dr. Shannon, Dr. Khaleeq, and Dr. Hedrick demonstrated that
9 plaintiff's presentation, social functioning, and mental status examinations were consistent with
10 working in a setting with occasional public and coworker contact and with an ability to
11 understand, remember, and carry out simple instructions for tasks performed in a setting with a
12 predictable routine. Tr. 29, 413–33, 498–502, 552–57.

13 Second, the ALJ noted that plaintiff's work history and daily activities were not
14 consistent with her stated mental and physical limitations. The ALJ noted that plaintiff had a
15 fifteen-year history of working with the psychological diagnoses and migraines she now
16 complains of and she continues to be involved in the family business by preparing invoices,
17 bookkeeping, preparing tax returns, corresponding with clients, and buying office supplies. Tr.
18 29–33, 50–52, 219. Moreover, plaintiff reported daily activities as diverse as preparing meals
19 daily; performing household chores such as dishwashing, laundry, watering plants, filling a
20 birdfeeder, vacuuming, sweeping, and mopping; going outside alone, driving a car, and shopping
21 in stores weekly for food; engaging in hobbies such as reading, writing, singing, researching,
22 bird watching, drawing, painting, crafts, and games; reading, writing, and singing; watching
23 movies four to five times a week; seeing friends two times a month; emailing her stepdaughter

1 daily and other friends weekly; going to church, weekly self-help meetings, and doctor
2 appointments; walking 20 minutes four times per week; and exercising 25 minutes on a
3 stationary bike every other day. Tr. 32, 272–74, 292, 625, 672.

4 Third, the ALJ noted internal inconsistencies in plaintiff’s testimony that undermined the
5 reliability of her testimony about the severity of her symptoms. Plaintiff reported having no
6 problems getting along with others and that she got along with authority figures “quite well.” Tr.
7 29, 293–94. Plaintiff reported to Dr. Shannon in 2016 that although she began to have anxiety
8 and panic symptoms in high school, and was diagnosed with depression and anxiety in the
9 1990s, she very rarely experienced panic attacks presently and had been psychiatrically stable for
10 two years. Tr. 800–02. Moreover, although plaintiff testified that her mental limitations and
11 migraines rendered her debilitated even during the 15 years she was employed full-time and
12 presumably was *not* disabled, she acknowledged to treating physician Dr. Bell that Botox
13 therapy for her migraines was effective and she was “ecstatic over her improvement in the
14 improvement in the quality of life,” moving from almost daily migraines to one or two per week.
15 Tr. 31, 531. At the hearing, plaintiff acknowledged that she had suffered from migraines for 15
16 years but “[w]ith treatment, they’ve gotten better.” Tr. 65.

17 The Court finds that all three of the ALJ’s stated reasons for discounting plaintiff’s
18 testimony are specific, clear, and convincing. Although plaintiff invites the Court to adopt her
19 interpretation of her testimony, the ALJ did not harmfully err as a matter of fact or law by
20 making reasonable inferences from the record and discounting plaintiff’s symptom testimony.

21 3. Lay Testimony

22 Plaintiff argues that the ALJ harmfully erred by not stating a reason for rejecting a
23 statement by plaintiff’s work supervisor Deana Seeley and by failing to state a germane reason

1 for discounting statements by plaintiff's mother Norma Weston. The Court disagrees.

2 The ALJ did not address Ms. Seeley's August 19, 2013 lay statement that plaintiff
3 continued to have physical and mental issues stemming from a May 2013 accident that prevented
4 her from working full-time, including muscle spasms interfering with the ability to sit for long
5 periods, pain from the required, repetitive typing, and memory and clarity issues. Tr. 459. The
6 Court finds that any error the ALJ made in failing to address Ms. Seeley's lay statement was
7 harmless. First, Ms. Seeley's statement was made more than 6 months prior to the alleged onset
8 date and during a period in which it is presumed that plaintiff was not disabled. Second, no one
9 disputes that plaintiff cannot return to her previous relevant work. Third, plaintiff has failed to
10 demonstrate that Ms. Seeley's statement is inconsistent with the assessed RFC.

11 The ALJ discounted Ms. Weston's statements because they were inconsistent with the
12 medical evidence and with plaintiff's reported level of activity. As discussed earlier, these
13 rationales constitute germane reasons to reject Ms. Weston's statements.

14 The Court finds that the ALJ did not harmfully err as a matter of fact or law by not
15 addressing Ms. Seeley's lay testimony and by discounting Ms. Weston's lay testimony.

16 CONCLUSION

17 For the foregoing reasons, the Commissioner's decision is **AFFIRMED** and this case is
18 **DISMISSED** with prejudice.

19 DATED this 16th day of January, 2019.

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22 BRIAN A. TSUCHIDA
23 Chief United States Magistrate Judge